

UNITED STATES BANKRUPT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE:)	
)	
Mark N. Head)	Case No: 09-15856-SSM
)	
<u>Debtor</u>)	
)	
JPMORGAN CHASE BANK, N.A.)	
)	
Plaintff,)	Adversary No:
)	
v.)	
)	
MARK N. HEAD)	
)	
Defendant.)	

COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

COMES NOW your Plaintiff, JPMorgan Chase Bank, N.A., by counsel, and for its Complaint to Determine Dischargeability of Debt, under 11 U.S.C. §523(a)(2) and (a)(6), states as follows:

1. This Court has jurisdiction in this matter pursuant to 28 U.S.C. §1334.
2. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I).
3. The Defendant, Mark N. Head, is a debtor in a pending bankruptcy case, filed in this Court, Case No: 09-15856.
4. On or about October 23rd, 2007, Defendant entered into a Virginia Retail Installment Contract (hereinafter referred to as "Agreement") with HBL, LLC, for the purchase of a 2008 Porsche 911 Turbo, VIN WPOAD29988S783462 (hereinafter referred to as "Porsche.") As part of the same Agreement, an assignment of the Agreement was made to JPMorgan Chase Bank, N.A. A copy of the Agreement is attached hereto as Exhibit "A," and incorporated herein by reference.
5. According to the terms of the Agreement, Defendant granted Plaintiff a purchase money security interest in the Porsche, and agreed to repay the sum of \$129,658.70, plus interest at the rate of 9.29% per annum.

6. On or about December 29, 2007, Defendant requested that the Plaintiff provide him with a payoff quote for the loan, which the Plaintiff so provided.

7. Also on December 29, 2007, the Defendant caused an electronic payment to be made to the Plaintiff, in the amount of \$126,000.00.

8. This payment did not payoff the balance of the loan. On January 6, 2008, Defendant requested a payment history from the Plaintiff. Defendant thereafter made a payment of \$2,375.00, which satisfied the loan in full.

9. On January 10, 2008, the Plaintiff released its lien on the title. On that same date, the payment of \$126,000.00 was reversed.

10. Having secured release of the lien on the title, Defendant secured a loan from Fairfax County Federal Credit Union, and granted the Credit Union a security interest in the Porsche.

11. Plaintiff was unaware that Defendant had granted a security interest in the Porsche to a third party.

12. Defendant continued to make sporadic payments on the loan to the Plaintiff through August, 2008. When he ceased making payments, Plaintiff called Defendant. Plaintiff reached the Defendant on or about October 17, 2008. At this time, Defendant advised that he was having a difficult financial situation, and the parties discussed a payment plan and possible voluntary repossession of the collateral. At no time during that phone call, or any subsequent phone call, in which voluntary repossession was discussed, did the Defendant ever advise that he had granted a third party a security interest in the Porsche.

13. The Defendant owes the Plaintiff the principal sum of \$115,239.19 with interest at the contract rate of 9.29% per annum, accruing from the date of last payment of October 30, 2008.

14. The value of the Porsche at the time of these events will be proven at trial.

15. Plaintiff is unaware of the current location of the Porsche, and believes that it may have been sold by the Defendant.

COUNT 1 - ACTUAL FRAUD 11 U.S.C. §523(a)(2)(A)

15. Plaintiff realleges and reincorporates paragraphs 1 through 14.

16. Defendant made the representation that he was making a payment, and that such payments would pay off the loan.

17. That at the time the representation was made, the Defendant knew the representation was false, in that the payment would be reversed, and would not in fact pay off the loan.

18. That the Defendant made the false representation with the intention of deceiving the creditor, thereby inducing the Plaintiff to release its lien on the Porsche.

19. That the Plaintiff actually and justifiably relied on such representation.

20. That the Plaintiff sustained the alleged loss and damage as the proximate result of the false representation. By releasing the lien, the Plaintiff became an unsecured creditor, and was unable to repossess its collateral, thereby satisfying the loan.

COUNT 2 - WILLFUL AND MALICIOUS INJURY TO THE PROPERTY

PLAINTIFF'S PROPERTY 11 U.S.C. 523 (a)(2)(6)

21. Plaintiff realleges and reincorporates paragraphs 1 through 14.

22. Defendant did willfully and maliciously cause injury to the property of the Plaintiff.

23. By causing the Plaintiff to release its lien on the title, Defendant did deliberately and intentionally in knowing disregard cause the Plaintiff to lose its security interest.

24. Defendant caused further injury by obtaining a new loan with a different creditor, and providing the Porsche as collateral for the subsequent loan.


25. Defendant caused additional damage when he sold the Porsche.

26. During this time period, Defendant concealed the true status of the Porsche and its title from the Plaintiff, by leading the Plaintiff to believe that the Plaintiff's lien was still on the title, by

not disclosing the fact that a different creditor had possession of the title, and by not telling the Plaintiff that the vehicle had been sold.

WHEREFORE the Plaintiff, JPMorgan Chase Bank, N.A., by counsel, prays this Court to order that the debt owed by the Defendant, Mark N. Head, to the Plaintiff as described herein is a nondischargeable debt pursuant to 11 U.S.C. §523(a)(2) and (a)(6), that this Court enter a Judgment for the Plaintiff against the Defendant in the amount of One Hundred Fifteen Thousand, Two Hundred Thirty Nine Dollars and Nineteen Cents (\$115,239.19), with interest at the contract rate of 9.29% per annum accruing from the date of last payment of October 30, 2008, or such other amount as determined by the Court, and for all other and further relief that this Court deems just and proper

JPMORGAN CHASE BANK, N.A.

By: 
Of Counsel

Matthew D. Huebschman (VSB # 44181)
SHENANDOAH LEGAL GROUP, P.C.
310 S. Jefferson Street
Roanoke, Virginia 24011
540-344-4490, ext 20
fax 540-343-0185
mhuebsch@shenlegal.com

Buyer (and Co-Buyer)
Name and Address
Include County and Zip Code:

Seller (Credit)
Name and Address

MARY HEAL
11714 LAKE FOREST DR
RESTON FAIR AR VA 20154166

NBL, LLC
6545 LEEBURG PIKE
VIENNA VA 22182

WHO IS BOUND: You, the Buyer (and Co-Buyer, if any) may buy the vehicle described below for cash or on credit. By signing below, you agree to buy the vehicle on credit under the terms on the front and back of this Contract and are individually liable for any amount due. This contract is not contingent upon obtaining financing on terms which are satisfactory to the parties in this Contract. We, "us," and "our" mean the Seller named above and after assignment and acceptance, the Seller's assignee, JPMorgan Chase Bank, N.A., acting on its own or as agent for an affiliated entity (and any subsequent assignee).

DESCRIPTION OF VEHICLE: You agree to buy, and we agree to sell the following vehicle:

New Used or Demo	Year	Make and Model	Body Type	Vehicle Identification No.	MSRP	Net Price	Use for Which Purchased
NEW	2008	PORSCHE 911 TURBO CO	TURBO COUPE	WP0AB29985783462			personal business agricultural

If truck - Describe body, gross vehicle weight and major items of equipment sold

NOTICE TO BUYERS OF USED OR DEMONSTRATION VEHICLES: The information you see on the window form for this vehicle is part of this Contract. Information on the window form overrides any contrary provisions in the contract of sale.

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid after you have made all payments as scheduled	The total cost of your purchase or credit, including your down payment of
9.29%	\$ 29652.94	\$ 29658.70	\$ 69622.64	\$ 3000.00

PAYMENT SCHEDULE: Your payment schedule will be \$ 2355.87 each, due on the same day of each month starting on 11/22/2007.

PREPAYMENT: If you pay off this Contract early, you will not have to pay a penalty.

SECURITY: You are giving us a security interest in the motor vehicle being purchased.

LATE FEE: If a payment is more than 7 days late, you may be charged 5% of the full amount of the installment due.

OTHER TERMS: Please read this Contract, including the reverse side, for additional information on security interest, nonpayment, default and our right to require prepayment in full before the scheduled maturity date.

ITEMIZATION OF THE AMOUNT FINANCED

1. Cash Price (including any accessories, services, and taxes)	\$132634.70
2. Downpayment	
A. Net Trade-in	\$ N/A
Your Trade-in is a Year Make Model	
B. Cash Downpayment	\$ 3000.00
C. Total Downpayment (2A + B)	\$ 3000.00
3. Unpaid Balance of Cash Price (1 - 2C)	\$ 296534.70
4. Other Charges Including Amounts Paid to Others on Your Behalf	
A. Cost of Optional Credit Insurance for the Term(s) Specified in the "Credit Insurance" Paragraph of this Contract Paid to the Insurance Company(s) Named Below:	
Life \$ N/A	
Disability, Accident and Health \$ N/A	
B. Official Fees Paid to Government Agencies	\$ N/A
C. Taxes Not Included in Cash Price	\$ N/A
D. Government License and/or Registration Fees (Itemize)	\$ 14.00
E. Government Certificate of Title Fees	\$ 10.00
F. Other Charges (Describe who will receive payment and purpose)	
to TBEX for Optional Gap Coverage	\$ N/A
to for N/A	\$ N/A
G. Total Other Charges and Amounts Paid to Others on Your Behalf	\$ 24.00
(4A + B + C + D + E + F)	\$ 296558.70
5. Amount Financed (Unpaid Balance) (3 + 4G):	

Important Disclosures: This contract is not a loan. It is a security agreement. The amount financed is the cash price minus the downpayment. The amount financed is not the same as the amount borrowed. The amount financed is the amount of credit provided to you or on your behalf. The amount financed is the amount of credit provided to you or on your behalf. The amount financed is the amount of credit provided to you or on your behalf.

Buyer's and Co-Buyer's initials: X X

PROMISE TO PAY: You promise to pay us the Amount Financed shown above, plus a Finance Charge determined by applying a daily rate of 1/365th of the Annual Percentage Rate shown above to the unpaid balance of the Amount Financed each day.

PAYMENTS BEFORE OR AFTER DUE DATE: This is a simple interest Contract. This means that the amount of the Finance Charge shown above may vary depending upon when your payments are received. We compute your Finance Charge each day on the unpaid balance of the Amount Financed. If no late charge and/or return check charge is owed, we credit each payment first to accrued Finance Charge and then to the unpaid balance of the Amount Financed. If a late charge and/or return check charge is owed, we credit each payment first to accrued Finance Charge, then to the scheduled unpaid balance of the Amount Financed, then to unpaid late and return check charges, and then to the unpaid balance of the Amount Financed. The earlier you make payments before their due dates, the less Finance Charge you will owe. The later you make payments after they are due, the greater the Finance Charge. We will send you a check for any amount owed you (if it is \$1.00 or more) when you make your last payment; we will advise you of any additional amount owed if it is \$1.00 or more.

LOCATION OF VEHICLE: The vehicle will be kept at the above address of the Buyer, unless another address is listed.

(Street and Town)

CREDIT INSURANCE: Credit life and credit disability, accident and health insurance are not required to obtain credit and will not be provided under this Contract unless you sign for them and agree to pay the additional cost. The policies or certificates issued by the Company(s) named will describe the terms and conditions in further detail.

By signing below, you affirmatively elect insurance under federal laws, and acknowledge receipt of separate enrollment forms under Virginia law.

Life (), Buyer (), Co-Buyer (), Both at a premium of \$ N/A for a term of

Credit Life Insurance will pay your debt on this Contract up to \$ N/A

Disability, accident and health (Buyer Only) at a premium of \$ N/A for a term of

Credit disability, accident and health insurance will pay your debt on this Contract up to \$ N/A

The name of the insurer is Name of Home Office Address

Buyer Signature Date Co-Buyer Signature Date

No Liability Insurance Included

PROPERTY INSURANCE: Insurance coverage for loss or damage to the vehicle (collision, fire and theft) is required and you have the option of furnishing the required insurance either through your existing policies or you may purchase equivalent insurance coverage from anyone you wish who is acceptable to us. If you elect to purchase this coverage through the Seller,

it will be furnished by at a premium of N/A, but such charge is not included in this Contract.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this Contract and retain its right to receive a part of the Finance Charge.

BY SIGNING THIS CONTRACT, YOU ACKNOWLEDGE THAT IT CONTAINS AN "AGREEMENT TO ARBITRATE DISPUTES" ON THE REVERSE SIDE, THAT YOU HAVE READ IT AND AGREE TO ITS TERMS.

IMPORTANT: READ THE ADDITIONAL TERMS ON REVERSE SIDE BEFORE SIGNING BELOW.

NOTICE TO BUYER: Do not sign this Contract if there are blank spaces. You acknowledge that you have received a copy of this Contract prior to signing with all blanks filled in and that you have read it and understand it. You are also entitled to receive a copy of this Contract signed by all parties. Keep it to protect your legal rights.

Buyer Signs Co-Buyer Signs

By signing here, the Seller agrees to the terms of this Contract and assigns this Contract to Seller's assignee under the terms agreed to by Seller and Seller's assignee.

Seller (Credit) Signs By THE BUSINESS-MANAGER

